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No. 225

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IN THE

Supreme Court of the United States

OCTOBER TERM—1954

HARRY BAETICH,

Petitioner,

against

OVETA CULP HOBBY, Secretary, Department of Health, Education and Welfare,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Supreme Court of the United States

OCTOBER TERM—1954

HARRY BAETICH,

Petitioner,

—against—

OVETA CULP HOBBY, Secretary, Department of Health, Education and Welfare,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled case on April 23, 1954 reversing the decision of the District Court.

Opinions Below

The opinion of the District Court (R. 19-21) is not officially reported. The opinion of the United States Court of Appeals (R. 23-27) is reported in 212 F. 2d 480.

Jurisdiction

The judgment of the Court of Appeals was entered on April 23, 1954 (R. 28-29). The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

Questions Presented

The case presents conflicting judicial interpretations of Section 202(h) of the Social Security Act.

Whether the Court of Appeals properly construed the statute here involved by holding that the supplying of

support to the parent, by another member of the family *during the assured's fatal illness* (rendering the assured unable to bear the financial burden of support during the period thereof) resulted in a termination of the economic relationship between the assured and her father so as to cut off all insurance benefits, notwithstanding the fact that over the aggregate period of years (inclusive of the period of the illness) more than half of the aggregate support payments had been supplied by the assured.

Statute Involved

The pertinent statutory provisions of Section 202(h) provides as follows:

> "(h) (1) Every parent * * * of an individual who died a fully insured individual * * * of such parent * * * (b) was receiving *at least one-half* of his support from such individual *at the time* of such individual's death and filed proof of such support within two years of such date of death, shall be entitled to a parent's insurance benefit * * *."

Statement

Petitioner on November 27, 1951 filed an application for parents insurance benefits under Section 202(h) of the Social Security Act (42 U. S. C. §402(h)) based upon the wage record of the petitioner's daughter.

Petitioner, then 82 years of age, was the father of Gertrude Baetich, a wage earner *fully insured* under the provisions of the Social Security Act (R. 6, 19). As the opinion below (HINCKS, *J.*) states:

> "The uncontroverted facts in this case and its history can be stated briefly. The plaintiff's daughter became stricken by cancer in July, 1949 and died approximately 27 months later in September 1951. Up to the time of her illness, *the daughter had long con-*

tributed more than one-half of the plaintiff's support and thereafter the plaintiff has been supported by his son. In July, 1949, it was believed that the daughter because of her illness had only four months to live but by subjecting herself to what was then unorthodox treatment, her life was prolonged until September, 1951—some 27 months later." (R. 24).

Petitioner's application for parents' insurance benefits based upon the wage record of his daughter having been disallowed by the Referee of the Federal Security Agency on June 16, 1952 (R. 6-7), petitioner requested a review by the Appeals Council of the Social Security Administration; the Appeals Council denied the request on July 25, 1952 without opinion (R. 4). Thereafter an action was brought to review the final determination of the Federal Security Administrator (R. 3-4) (42 U. S. C. 405[g]).

The facts being uncontroverted, both petitioner and respondent moved for summary judgment (R. 18-19). The District Court overruled the Federal Security Administrator and held that petitioner was entitled to parents' insurance benefits under the provisions of the Social Security Act (R. 19-21). Respondent appealed therefrom (R. 21-22). The Court below by order dated April 23, 1954 reversed the order of the District Court and dismissed petitioner's complaint (R. 28-29).

The Referee of the Federal Security Agency denied dependency benefits to petitioner upon the basis of a rule of thumb interpreting "the phrase 'at the time of' the death of the wage earner to mean the period of approximately one year prior to the wage earner's death" (R. 7). The District Court overruled this "rule of thumb" formula in an opinion which pointed out that prior thereto the Administrator had enlarged the rule from four months to one year and ruled that "what might be reasonable in one case might be unreasonable in another case * * *. He

[the administrator] enlarged the rule from four months to one year and it seems to me that in view of the facts he should have enlarged it to include social security benefits to this plaintiff" (R. 19-20).

The Court below sustained petitioner's contention that the statute was not to be literally construed (R. 25). Indeed, Judge HINCKS speaking for the unanimous Court stated "we agree that the Act has great flexibility" (R. 26). Petitioner was denied relief, however, on a new theory. Because of the wage earner's prolonged illness the son was constrained not alone to continue but to augment his contribution for the support of petitioner (the assured was only required to pay at least one-half) during the period of the assured's illness. The Court held that upon these facts "the dependency of the plaintiff on his son for the major part of his support for the 27 months [the period of the fatal illness] preceding the death of the daughter, wage earner, created an economic relationship between the plaintiff and his son which has superseded his dependency on the daughter. It follows that the plaintiff under the Act was not entitled to the benefits applied for" (R. 26-27).

Reasons for Granting the Writ

This case involves the construction and application of an Act of Congress and Federal Administration Regulations. That confusion exists in the statutory construction of Section 202(h) of the Social Security Act is manifest from the opinion of the Court of Appeals. The Court stated "that the Referee of the Agency [allegedly expert authority in this field] was not accurate when he interpreted the phrase 'at the time of death' to mean the period of approximately one year prior to the wage earner's death" (R. 25-26), and held that the District Court misconceived and erroneously interpreted the coverage and meaning of the depend-

ency statute (R. 26). The statute is comparatively new and as the opinion below indicated "there was no administrative regulation in force at the time of the daughter's death, and so far as we are aware, none has since been promulgated" (R. 25).

The Court below in attempting to clarify the statutory definition of the particular phrase in question has failed to conserve the spirit and intent of the Act. So, too, if we assume that the Court properly defined the phrase in question, then the definition operates as a denial of the primary purpose of Congress in effectuating such law.

No consideration whatsoever was given to the fact that the daughter, wage earner, had contributed more than one-half of her father's support over the aggregate period of years during which he was supported by his children including the period of illness. Admittedly 'up to the time of her illness the daughter had long contributed more than one-half of plaintiff's support" (R. 24). The amount contributed by the son during the 27 months of the daughter, wage earner's illness, was far less than one-half of the total support supplied over the aggregate period of years involved.

The statute made the insurance benefits applicable if the parent "was receiving at least one-half of his support" from the assured "at the time of such individual's death". The question immediately presented itself whether the phrase "at the time of death" should be literally construed. If it were, it is obvious that that would result in an impractical, unworkable and utterly unjust operation of the statute, because death is usually preceded by some period of disabling illness. Death is not usually instantaneous, and the fatal illness may be of short or of long duration.

Flexibility necessarily must exist in considering the period involved in relation to the phrase "at the time of death". The Social Security Administrator sought to

overcome the difficulties engendered by the statute by first adopting an arbitrary four month period and then an arbitrary annual period. The District Court correctly held that the establishment of arbitrary periods was likewise unworkable and correctly ruled that "a reasonable period" was to be reviewed in order to get a proper factual background upon which to determine whether payment of the insurance benefits were warranted. A reasonable period would be based upon the attendant facts and circumstances and would not be measured by rigid and inflexible time periods.

The Court of Appeals erred in laying down the doctrine predicated upon an alleged "termination of the economic relationship" between the daughter, wage earner, during the period of illness where she was deprived of her earning capacity. Prior to the ruling of the Court below, if the illness were but of a four-months' duration, when that was the "rule of thumb" or a year's duration, when the time was extended, the insurance benefits would have been paid regardless of the alleged termination of the economic relationship presumably occasioned by the fatal illness. Under the doctrine of the Court below, the parent is deprived of all support benefits no matter how long or how short the fatal illness, if it brings about a cessation of support to the parent. Indeed that would seemingly be borne out by the only other decision cited in the opinion below involving the interpretation of this statute (R. 26). The Court of Appeals referred to the opinion of Judge LINDLEY in *Stephens* v. *Federal Security Administrator* (E. D. Ill., 1949), 1 C. C. H. Unemployment Insurance Report, Section 9420 (which was prior to the amendment of the statute which then required that a parent be chiefly dependent and supported by the wage earner). That case held that the beneficiary's entitlement to benefits depended "on the existence or non-existence of an economic relationship which has been terminated by the death of the wage earner." The Court below pointed out that "in the

Stephens case it was held that the beneficiary was not entitled to benefits because for fifty days prior to the wage earner's death (there the child beneficiary's natural father) there had come into existence an economic relationship of dependency on a stepfather which superseded the existence of such a relationship with the natural father." (R. 26)

If the *Stephens* case can be said to present a proper basis for interpretation of this statute, it does not matter whether the period be 50 days or one week. If the *wage earner* becomes fatally ill and (as would normally be the case) has no estate from which to supply the parent's support, support must be forthcoming during the period of illness from some source or the parent must be permitted to starve and suffer deprivation during the period of illness, in order not to lose the insurance benefits. Such interpretation of the statute, we submit, is cruel and subverts its beneficent purpose.

It is also unworkable and impractical as is readily apparent from further illustration. Since the statute by its very terms envisaged support as forthcoming from more than one person and does not prescribe that they all contribute at the same time (they may contribute alternately, weekly, monthly or quarterly, etc.), let us assume that the one contributing at least one-half dies during the period while another child is furnishing the support, what happens to the economic relationship theory in that situation? Obviously there is a continuing economic relationship between a parent and each child notwithstanding that there is a variance in the support contribution, or the time when support payments are made.

So here, while the daughter and son were jointly supporting the father it cannot correctly be said that where the daughter suffered a fatal illness a new economic relationship came into being with the son, because he simply continued to make contributions towards the support of

the father. For aught that appears, the contributions were no greater in amount than theretofore but even if they were augmented because the daughter's illness resulted in a deprivation of her power to continue her contributions, upon what basis can it be said a new economic relationship came into being?

The question primarily would be,—who had paid "at least one half" of the support during the insurance period involved. The undisputed facts established that "for many years", that was furnished by the daughter (R. 24). The 27 month period of contributions made by the son during the daughter's illness did not establish a basis for deprivation of the parent's right to the insurance benefits for which his daughter had paid in full. Concededly, she was a fully insured person (R. 3, 5, 6, 19, 24).

Indeed, the maximum benefits to a parent would be approximately $35 to $40 a month, hardly enough to enable even this aged parent to support himself. The statute thus contemplated the continuance of the economic relationship with the other children. If the Court's statutory construction is permitted to stand, a dependent parent is forever foreclosed from obtaining the benefits under the express provisions of the Act if a relative or other member of the family assumes the burden of parental support during the period of a prolonged fatal illness of a fully insured wage earner. In the State of New York, a husband, wife, father, mother, grandparent, child or grandchild can be compelled to support poor relations or be penalized therefor (*Code of Criminal Procedure*, Sec. 914, *Domestic Relations Court Act*, Sec. 101, *Social Welfare Law*, Sec. 101-110). Thus, by assuming support or being compelled to support a poor relative, a so-called "superseding economic relationship" would arise destroying the insurance benefits that were fully paid for. Obviously, the end result would forever preclude a beneficiary parent with adult children from obtaining parents' insurance benefits under the Act despite a wage earner's substantial contributions to the insurance fund over a period of many years.

It is to be observed that petitioner's right to insurance benefits is not charity (*Dismuke* v. *United States,* 297 U. S. 167; *Lynch* v. *United States,* 292 U. S. 571; *Ewing* v. *Gardner,* 185 F. 2d 781, rev. in part on other grounds, 341 U. S. 321). Moreover, the statute has been liberally construed in favor of the insured's beneficiary (*Gonzales* v. *Hobby,* 110 F. Supp. 893).

Assuming, *arguendo,* that the fully insured wage earner (daughter) had sufficient funds with which to support her father after the onset of her fatal illness, petitioner would have received the benefits under the Act. Here, the assured daughter wage earner as a result of a prolonged and costly fatal illness was unable to continue support payments. The brother continued to discharge his support obligations and to augment his contributions and expended large sums to prolong his sister's life (R. 26). These facts, the Court below held, created a "superseding economic relationship" that destroyed the insurance benefits under the Act.

The construction applied by the Court below is shockingly unjust and erroneous. Assuming that the brother had died at any time after the onset of his sister's fatal illness without an estate or means to support petitioner, the father would then have been left to starve or seek charity. On the same theory, after the onset of the wage earner's fatal illness was the brother expected to permit the father to starve in order to maintain the coverage under the Act?

Petitioner's son was entitled to aid both his sister and petitioner in the circumstances here present and yet so formulate his acts and course of conduct with the deliberate purpose of retaining rather than destroying the insurance coverage that had been fully paid for by his sister. He therefore could justifiably have advanced the funds necessary to enable his sister to continue to discharge her support obligations. He could have donated those funds

for that purpose to her or, indeed, make a loan thereof notwithstanding that the sole purpose of any of these acts was deliberately to retain an insurance coverage that already had been fully paid for by the sister.

Surely there could be nothing legally remiss, much less morally questionable in such procedure. The Statute certainly did not intend that the insurance coverage be maintained only in the event that during the period of the fatal illness of the insured, that resulted in an involuntary cessation of her capacity to fulfill the support obligations as required by the statute, that the parent be left to starve. The statute, manifestly, was so generally worded as to allow reasonable flexibility in its interpretation and implementation.

The Court below failed to give effect to the spirit and intent of Congress in enacting social legislation and in its application, leaves the intent and meaning of the statute ill defined and in a state of confusion that will deny to a great multitude the benefits that Congress primarily intended. Manifestly, innumerable persons now covered by the Act would be adversely affected by the decision below (*Patterson* v. *Lamb*, 329 U. S. 539).

The issue presented is novel. The decisions are meagre. The question is of continuing importance in the administration of the Social Security Act and makes desirable an early and definitive ruling by the Supreme Court.

CONCLUSION

For the foregoing reasons this petition for *certiorari* should be granted.

Respectfully submitted,

SAMUEL GOTTLIEB,
Counsel for Petitioner.

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 173—October Term, 1953.

(Argued March 3, 1954 Decided April 23, 1954.)

Docket No. 22939

HARRY BAETICH,

Plaintiff-Appellee,

—v.—

OVETA CULP HOBBY, Secretary, Department of Health, Education and Welfare,

Defendant-Appellant,

Before:

CHASE, *Chief Judge,*
FRANK and HINCKS, *Circuit Judges.*

Appeal by the defendant below from a judgment of United States District Court for the Eastern District of New York, Abruzzo, *J.*, presiding, entered on an order granting plaintiff's motion for judgment on the pleadings. REVERSED.

GAINSBURG, GOTTLIEB, LEVITAN & COLE (Emanuel Baetich and Harry Giesow, of counsel), *Attorneys for Plaintiff-Appellee.*

WARREN E. BURGER, Asst. Atty. Gen., Leonard P. Moore, U. S. Atty., Samuel D. Slade and John G. Roberts, Attorneys, Department of Justice, *Attorneys for Defendant-Appellant.*

HINCKS, *Circuit Judge*:

The uncontroverted facts in this case and its history can be stated briefly. The plaintiff's daughter became stricken by cancer in July, 1949 and died approximately 27 months later in September 1951. Up to the time of her illness, the daughter had long contributed more than one-half of the plaintiff's support and thereafter the plaintiff has been supported by his son. In July, 1949, it was believed that the daughter because of her illness had only four months to live but by subjecting herself to what was then unorthodox treatment, her life was prolonged until September, 1951—some 27 months later.

Thereafter plaintiff applied for the benefits flowing to him as a parent who had received at least one-half of his support from the deceased daughter as a fully insured individual under the Social Security Act, 42 U. S. C. A. 301 *et seq.*, and specifically Sec. 402(h) thereof. The portion of the section just cited, which is relevant here reads as follows:

> "Every parent * * * of an individual who died a fully insured individual * * * (who) * * * was receiving at least one-half of his support from such individual at the time of such individual's death * * * shall be entitled to a parent's insurance benefit * * *"

This application was denied by the Federal Security Agency (the predecessor agency of the Department of Health, Education and Welfare) and on appeal to a referee of the Social Security Administration was also denied on the ground that the daughter was not contributing to the support of the plaintiff "at the time of" her death. A request for a review by the Appeals Council of the Social Security Administration, Federal Security Agency, was refused, whereupon plaintiff instituted this action in the District Court, agreeable to 42 U. S. C. A. 405(c)(8) and (g). The District Court granted the plaintiff's motion for judgment on the pleadings and entered judgment accordingly, thereby sustaining the plaintiff's application.

There was no administrative regulation in force at the time of the daughter's death, and so far as we are aware none has since been promulgated, which purported to define the statutory condition "at the time of such individual's death" imposed by 42 U. S. C. A. 402(h). However there was a regulation, 20 C. F. R. 404, 720, which, under the caption "Evidence of receipt of support by parent," required the parental applicant to list, for a period of at least one year preceding death of the wage-earner, all the items of contributions to the parent's support by the wage-earner together with all detail as to the parent's income from other sources. Its obvious purpose was to obtain a factual background from which to determine whether the statutory condition had been satisfied in the particular case. By requiring information covering the preceding year it did not purport to preclude the Administrator from looking further into the past: nor did it purport to define the statutory phrase "at time of—death" as meaning for every case at any time within the year preceding death. At most, it imported official recognition of the sensible view that not in every case can the statutory words be taken literally and that therefore at least the minimal information and background prescribed by the regulation was needed for administrative decision of the question whether a particular case met the substance of the statutory condition.

We therefore agree with the contention advanced by appellant that the referee of the agency was not accurate when, in his memorandum of decision, he said, apparently referring to the regulation just discussed, that Social Security Administration "has interpreted the phrase * * * to mean the period of approximately one year prior to the wage earner's death." At least he was not accurate if he meant that every case in which the wage earner furnishes the required support at any time within the year of death, the benefits attach; otherwise not. Perhaps it was because of this misconception that the judge below erroneously thought, as his memorandum attests, that

the statutory definition was sufficiently flexible to permit the result to depend upon such considerations as (1) the commendable conduct of the plaintiff's son who upon his sister's illness, not only took over from her the burden of parental support (which after all was his legal duty) but also expended large sums to prolong his sister's life, and (2) the sister's courage in submitting to the drastic treatment which prolonged her life and thereby weakened the plaintiff's claim of dependence upon her up to the time of her death.

Although such considerations are not germane, we agree that the act has great flexibility. But we think its reach can only be pricked out by decisions in individual cases, each presented on its own facts. Its proper scope received some definition in an opinion by Judge Lindley *Stephens* v. *Federal Security Administrator* (E. D. Ill. 1949), 1 CCH Unemployment Insurance Report, Section 9420. It was there held that the beneficiary's entitlement to benefits depended "on the existence or non-existence of an economic relationship which has been terminated by the death of the wage earner." With this we agree. In the *Stephens* case it was held that the beneficiary was not entitled to benefits because for fifty days prior to the wage earner's death (there the child beneficiary's natural father) there had come into existence an economic relationship of dependency on a step-father which superseded the existence of such a relationship with the natural father.

And so on the facts presented here, we hold that the dependency of the plaintiff on his son for the major part of his support for the twenty-seven months preceding the death of the daughter-wage-earner, created an economic relationship between the plaintiff and his son which had superseded his dependency on the daughter. It follows that the plaintiff under the Act was not entitled to the benefits applied for.

Judgment reversed and case remanded with instructions (1) to vacate the order granting plaintiff's motion and (2) to grant defendant's motion for summary judgment and enter a judgment dismissing the complaint.

Judgment

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 23 day of April one thousand nine hundred and fifty-four

Present:

HON. HARRIE B. CHASE,
Chief Judge,
HON. JEROME N. FRANK,
HON. CARROLL C. HINCKS,
Circuit Judges.

HARRY BAETICH,
Plaintiff-Appellee,

vs.

OVETA CULP HOBBY, Secretary, Department of Health Education and Welfare,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and action remanded with instructions (1) to vacate the order granting plaintiff's motion and (2) to grant defendant's motion for summary judgment and enter a judgment dismissing the complaint in accordance with the opinion of this Court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

A. DANIEL FUSARO
Clerk

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 225

HARRY BAETICH, PETITIONER

v.

OVETA CULP HOBBY, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the referee (R. 5-7) and of the District Court (R. 19-21) have not been reported. The opinion of the Court of Appeals (Pet. 11-14) has been reported at 212 F. 2d 480.

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1954 (Pet. 15). The petition for a writ of certiorari was filed on July 20, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a father, who was originally supported by his daughter but was then supported by his son during the twenty-seven months of the daughter's fatal illness and thereafter, is entitled upon the death of the daughter to survivorship benefits which are predicated under the Social Security Act upon the receipt of support from a child "at the time of" such child's death.

STATUTES AND REGULATIONS INVOLVED

1. Section 202(h) of the Social Security Act, as amended by the Social Security Act Amendments of 1950, 64 Stat. 482, 42 U.S.C. 402(h), provides in pertinent part:

> (h) (1) Every parent (as defined in this subsection) of an individual who died a fully insured individual after 1939, * * * if such parent—
>
> (A) has attained retirement age,
>
> (B) was receiving at least one-half of his support from such individual at the time of such individual's death and filed proof of such support within two years of such date of death,
>
> * * * * *
>
> (E) * * * shall be entitled to a parent's insurance benefit * * *.

2. Section 205(g) of the Social Security Act, 49 Stat. 620, as amended, 42 U.S.C. 405(g), provides in pertinent part:

> (g) Any individual, after any final decision of the Administrator made after a hear-

ing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Administrator may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of its answer the Administrator shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Administrator, with or without remanding the cause for a rehearing. The findings of the Administrator as to any fact, if supported by substantial evidence, shall be conclusive, * * *. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions.

3. 20 C.F.R. 404.720 provides:

§ 404.720 *Evidence of receipt of support by parent.* A parent who applies for monthly

benefits based upon the wages and self-employment income of an individual shall submit evidence of receipt of at least one-half of his support from such individual. Such evidence shall be a signed statement by the parent that, at the time of the individual's death, he was receiving at least one-half of his support from such individual. This statement shall set forth, as of the time of the individual's death and for a period of not less than one year prior to such time, the items expended and used for the parent's support and the value of each thereof, the amount of the parent's income, if any, and the items of contributions to the parent's support, the value and time of each, and by whom furnished. If the evidence described above is not obtainable, the reason therefor shall be stated and the applicant may submit other evidence of probative value. Proof that a parent was receiving at least one-half of his support from an individual, at the time of such individual's death, must, except as otherwise provided in § 404.1319, be filed within two years after the death of such individual (see § 404.328).

STATEMENT

Gertrude Baetich died on September 28, 1951 (R. 6). Until July 1949, she had supplied virtually all the support for her aged father, the petitioner (R. 6). At that time, however, she became incurably ill of cancer. Given only four months to live by using orthodox methods of treatment, she submitted to certain experimental cures which pro-

longed her life for 27 months (R. 20). Since Gertrude was unable to earn a living during the time of her illness, her brother Emanuel assumed the burden of supporting her as well as his father, the petitioner (R. 9-10).

After the death of Gertrude, who had been insured under the Social Security Act, petitioner filed an application for parents' insurance benefits. Section 202(h) of the Act (*supra*, p. 2) authorized the award of benefits to a parent under certain conditions which include that the parent

> was receiving at least one-half of his support from such individual [*i.e.*, the deceased] *at the time of such individual's death.* [Emphasis added]

The Federal Security Agency denied petitioner's claim on the ground that the deceased had not supported him at the time of her death (R. 14). Petitioner requested a hearing before a referee who held that "it would not be reasonable to interpret the phrase 'at the time of' as used in section 202(h) * * * to mean a period ended more than two years prior to the wage earner's death." Accordingly, the referee found that the deceased daughter had not supported her father at the time of her death (R. 5-7).

Review of the decision was sought by way of civil action as authorized under Section 205(g) of the Act (*supra*, pp. 2-3). The District Court decided in favor of petitioner. It felt that in view of the peculiar facts existing in the instant case the Federal Security Administrator should have inter-

preted the statutory language "at the time of her death" to include the 27 months of the daughter's fatal illness (R. 19-21). The Court of Appeals reversed (Pet. 11-14). Following the reasoning of *Stephens* v. *Federal Security Administrator*, 121 F. Supp. 120 (E.D. Ill.), the Second Circuit held that "the beneficiary's entitlement to benefits depended 'on the existence or non-existence of an economic relationship which has been terminated by the death of the wage earner'," and found that in the instant case "the dependency of the plaintiff on his son for the major part of his support for the twenty-seven months preceding the death of the daughter-wage-earner, created an economic relationship between the plaintiff and his son which had superseded his dependency on the daughter" (Pet. 14).

ARGUMENT

Under Section 202(h) of the Social Security Act (*supra*, p. 2), a surviving parent is entitled to insurance benefits if he meets with certain conditions including that he received at least one-half of his support from the deceased child "at the time of" the child's death. Petitioner claims the benefit of this statutory provision in spite of the facts that his daughter had ceased to support him 27 months before her death and that during this period he, as well as his daughter, were fully supported by his son. He seeks to have the statute interpreted as if it read: "if he was receiving his support from such individual at the time of such individual's death or at the time such individual became incapacitated to support him." We submit that the decision be-

low is correct and accords with the settled administrative practice, and that the interpretation which petitioner supports is inconsistent with both the language of the Act and the purposes which it seeks to accomplish.

1. As their terms indicate, the parents' benefit provisions of the Social Security Act do not provide for an automatic award on the death of a child, nor were they designed as compensation for the bereavement; they are directed solely at the alleviation of "a serious *financial loss* [suffered by parents] upon the death of the child who was their chief support [emphasis added]."[1] This basis for statutory compensation is particularly appropriate to the field of social legislation. See, e.g., *Baltimore & Philadelphia Steamboat Co.* v. *Norton,* 284 U. S. 408, 414; *Weeks* v. *Behrend,* 135 F. 2d 258, 259 (C.A.D.C.), interpreting workmen's compensation legislation. The court below, in keeping with the practical philosophy of the Social Security Act (cf. *Thompson* v. *Lawson,* 347 U. S. 334, 336-337), therefore properly applied a practical test which turned upon the question whether the parent suffered a financial loss—the termination of an economic relationship of dependency—as the result of the child's death, regardless of the length of the interval between the last support payment by the child and his death.

No such financial loss is suffered by a parent at the time of the death of a formerly supporting

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[1] H. Rept. No. 2526, 79th Cong., 2d Sess., p. 22; S. Rept. 1862, 79th Cong., 2d Sess., p. 30, and see H. Rept. 728, 76th Cong., 1st Sess., p. 7, S. Rept. 734, 76th Cong., 1st Sess., p. 7.

child where this support relationship has been superseded by a definite—not merely stop-gap—arrangement pursuant to which the duty to support has been assumed by another child for an indefinite period of time. In such a situation the economic relationship of support has shifted from the first to the second child; whether this occurs with or without the fault of the first child is immaterial. If the second child should die, the parent plainly would be entitled to survivorship benefits, provided the other conditions of Section 202(h) are met.

This interpretation of the statute is fully in accord with its purpose to compensate surviving parents for an actual loss of support, and it cannot be called "cruel" or "shockingly unjust" (cf. Pet. 7, 9). The key period is the time of the child's death, and the touchstone for the payment of benefits is the parent's economic position at that time. Congress apparently saw no need for the payment of social security benefits to a parent who at the time of the death of the child formerly supporting him is regularly being assisted by another child, even if this might result in a failure to relieve the financial burden shouldered by the latter child.[2]

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[2] It should be remembered that the Social Security Act does not constitute a contractual plan under which the insured pays premiums and is assured that either he or his relatives will obtain insurance benefits. The contributions of the insured take the form of an additional income tax (Internal Revenue Code Secs. 1500-1538) and benefits are payable only where all the statutory conditions have been met. Hence, in view of the fact that the original concern of the Social Security Act centered upon old age insurance and that survivorship benefits are predicated upon dependency, it may happen frequently that

2. The decision below is substantially in accord with the administrative interpretation of the Act. As the court has pointed out (Pet. 13), there are no regulations directly defining the statutory language "at the time of such individual's death." On the other hand, regulations going back to January 1, 1940, the effective date of the survivor benefit provisions of the Social Security Act,[3] have required the submission of a statement, covering a period of not less than a year preceding the death of the supporting child, setting forth the contributions of the child toward the parent and the latter's income from other sources.[4] The obvious purpose of this regulation—as recognized by the court below (Pet. 13)—is to provide the background and information required for an administrative decision whether or not the particular case comes within the scope of the statute; thus, the regulation itself is based on the view that the question whether the parent was supported by the child at the time

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no benefits whatever become payable upon the death before retirement age of a fully insured person. This factor has been considered in the computation of the premiums and benefits. H. Rept. 728, 76th Cong., 1st Sess., p. 7, S. Rept. 734, 76th Cong., 1st Sess., p. 7. Moreover, the lump sum payments pursuant to Section 202(i) of the Act provide for the return of a large portion of the contributions made by the insured. In the instant case, they amount to $145.50, as compared to approximately $150.50 paid by the deceased as social security taxes.

[3] Cf. Section 201 of the Social Security Act Amendment of 1939, 53 Stat. 1362.

[4] Social Security Regulations No. 3, Section 403.703(i), of May 21, 1940, effective January 1, 1940, 5 F.R. 1849, 1865, now 20 C.F.R. 404.720.

of his death is essentially a question of fact to be determined on the basis of all the circumstances. That the parent has not received any support from the child for an appreciable length of time, while not conclusive by itself, may well show that at the time of the child's death the support relationship had come to an end.[5] And while Section 202(h) of the Social Security Act has been liberalized twice,[6] the language "at the time of such individual's death" has been left intact. In such circumstances, the failure to change the administrative interpretation cannot be disregarded. Cf. *Hecht* v. *Malley*, 265 U. S. 144, 153; *Helvering* v. *Winmill*, 305 U. S. 79, 83; *Commissioner* v. *Flowers*, 326 U. S. 465, 469; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 308-311.

3. Although the survivorship benefit provision of the Social Security Act has been in effect for nearly fifteen years (*supra*, p. 9), there has been only

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[5] The statement of the referee to the effect that the Social Security Administration has construed the phrase "at the time of death" to mean a "period of approximately one year prior to the wage earner's death" (R. 6) apparently is based upon an inconsequential misunderstanding of the meaning of the "not less than one year" clause of 20 C.F.R. 404.720. See the decision below at Pet. 13-14.

[6] Social Security Act Amendments of 1946, Section 403 (60 Stat. 986) and Social Security Act Amendments of 1950, Section 101(a) (64 Stat. 482). In 1946, the term "wholly dependent and supported" was changed to "chiefly dependent and supported." In 1950, this requirement was relaxed to the present language, "was receiving at least one-half of his support from." The Social Security Act Amendments of 1954 (H.R. 9366, 83d Cong., 2d Sess.) do not change the text of Section 202(h). See S. Rept. No. 1987, 83d Cong., 2d Sess., pp. 96-98.

one reported case (*Stephens* v. *Federal Security Administrator,* 121 F. Supp. 120 (E. D. Ill.)), in addition to the instant one, in which the administrative interpretation of the clause "at the time of such individual's death" in Section 202 of the Act has been subject to judicial scrutiny.[7] This tends to indicate that the administrative practice has been working to the satisfaction of virtually all concerned. Moreover, in deciding the case at bar the Court of Appeals for the Second Circuit applied the test used in *Stephens* v. *Federal Security Administrator, supra.* Hence, there is harmony of administrative rulings and judicial decisions.

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[7] The unreported case of *Winters* v. *Oveta Culp Hobby,* U.S.D.C. for the Western District of Washington, Northern Division, No. 2857, decided on December 11, 1953, follows the reasoning of the *Stephens* case. We know of no other pertinent case.

CONCLUSION

The decision below is correct and in substantial accord with an administrative practice going back to the effective date of the statute; there is no conflict. For the above reasons, it is submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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AUGUST, 1954.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 309869 192

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HAROLD B. WILLEY, Cl

Supreme Court of the United States

OCTOBER TERM—1954

DOCKET No. 225

HARRY BAETICH,

Petitioner,

against

OVETA CULP HOBBY, Secretary, Department of Health, Education and Welfare,

Respondent.

PETITIONER'S REPLY BRIEF

Respondent's argument ignores (1) the express language of the Statute and (2) the basic question presented by the Petitioner.

Section 202(h) of the Social Security Act provides that the dependent parent receive "at least one-half of his support" from the insured wage earner. Thus, the Statute clearly recognizes that a dependent may receive a major portion of support (at least half) from other sources, yet be entitled to benefits under the Act, in the event of death of the wage-earner contributing one half.

Respondent urges that the Statute is directed "solely at the alleviation of 'a serious financial loss [suffered by parents] upon the death of the child'" (Respt. Br. p. 7), and that "no such financial loss is suffered by a parent at the time of death of a formerly supporting child where this support relationship has been superseded by a definite * * * arrangement pursuant to which duty to support has been assumed by another child for an indefinite period of time" (Respt. Br. pp. 7-8).

The error in such reasoning is obvious. If child A had been contributing $20.00 a week and child B $20.00 a week for the support of their parent, the death of child B leaves the parent with only $20.00 per week. Clearly, the parent has suffered a "serious financial loss". Following respondent's logic, the death of child B automatically brings about a so-called superseding "economic relationship", since the mere continuation of $20.00 payments by child A after B's death results in the fact that child A is supplying 100% support. Because the parent continues to receive $20.00 a week from child A, then constituting his sole maintenance, he is thereby deprived of survivorship benefits. There is no authority for such construction.

Respondent makes the untenable contention that since there has been only one reported case in 15 years concerning the survivorship benefit provisions of the Act, that is an indication that the administrative practice has been working to the satisfaction of all concerned.

In the attempted interpretation of this statute, there were two "rules of thumb," promulgated by the administrative agency, the 'four month' rule, later supplanted by the 'one year' rule, which the District Court held "should not be applied to this case" (R. 20). The Court of Appeals, on the other hand, in its opinion, observed "that the referee of the Agency was not accurate when, in his memorandum of decision, he said, apparently referring to the regulation just discussed, that Social Security Administration 'has interpreted the phrase * * * to mean the period of approximately one year prior to the wage earner's death.'" (Pet. p. 13), and goes on to state what it believes to be the "misconception" of the District Judge as to rulings and interpretations of the administrative agency (Pet. p. 13-14). Moreover, in the only two reported cases in the Federal courts, the District Judge in this case,

and the District Judge in the *Stephens* case decided in Illinois, different interpretations were made. It cannot therefore justifiably be concluded on this record that there has been consistency or uniformity in the interpretations of this Act.

Moreover, the paucity of cases under the Act is understandable. The survivor, if dissatisfied with a ruling of the Agency covering an administrative interpretation would be confronted with the cost of proceedings and appeals, such as were had here, well nigh prohibitive in the light of the small benefits to be derived, unless the legal services were supplied without charge by some friend or relative of the claimant. Here, the survivor, eighty-five (85) years of age, even if successful on the ultimate appeal, would receive approximately $35-40 monthly.

Respectfully submitted,

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Counsel for Petitioner.